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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,369	09/13/2000	JOHN F MCHALE	062891.0465	2747
7590	06/08/2004			EXAMINER
BARTON E SHOWALTER ESQ BAKER & BOTT'S L L P 2001 ROSS AVENUE DALLAS, TX 75201-2980			SHEW, JOHN	
			ART UNIT	PAPER NUMBER
			2664	
DATE MAILED: 06/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/662,369	MCHALE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	John L Shew	2664	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,19-21,23-26,29,31-33,35,38,41,43-46,49 and 51 is/are rejected.
- 7) Claim(s) 2-3,22,27-28,30,34,36-37,39-40,42,47-48,50 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

Page 27 line 9 cites "communication server 54" should be "communication server 58".

Page 40 line 6 cites "for a for a" should be "for a".

Page 45 line 2 cites "step 638" should be "step 634".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 19, 20-21, 23-26, 29, 31-33, 35, 38, 41, 43-46, 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaweethai et al., in view of Litteral et al.

Claims 1 and 25 Thaweethai teaches a digital subscriber line communication system (FIG. 1, FIG. 5) referenced by a call from Bandwidth-on-demand Multiplexing System A to Bandwidth-on-demand Multiplexing System B, comprising subscriber system having

an associated availability guarantee value (column 2 lines 20-25, column 7 lines 35-44) referenced by using Bandwidth-on-Demand Multiplexing System to select a modem that matches the required subscriber characteristics defined by Capacity Units which corresponds to availability guarantee value, a first pool of modems having a number of modems (FIG. 5, column 2 lines 44-52, column 7 lines 35-44, column 16 lines 1-4, 43-47) referenced by a database which maintains various modem types and capabilities such that modems with common capabilities such as DCESpeed is considered a first pool, a second pool of modems having a second number of modems (FIG. 5, column 2 lines 44-52, column 7 lines 35-44, column 16 lines 1-4, 43-47) referenced by a database which maintains various modem types and capabilities such that modems with common capabilities such as DCESpeed is considered a second pool, a communications server coupled to the subscriber system (FIG. 5) referenced by Connection Means coupled to the Remote Modem used by a subscriber, in response to a request for service (FIG. 1) referenced by Initiate Call, to an available modem in either the first pool of modems or the second pool of modems based upon the availability guarantee value associated with the subscriber system (column 6 lines 16-26, column 7 lines 35-44) referenced by the selection of modems based on characteristics associated to the Capacity Units required by subscribers. Thaweethai does not teach a plurality of subscriber systems, XDSL modems nor twisted pair data lines. Litteral teaches a plurality of subscriber systems (Figure 2) referenced by subscribers 100, 120, a plurality of twisted pair data lines coupled to a plurality of subscribers (Figure 2, column 7 lines 65-68, column 8 lines 1-3)

referenced by twisted pair transmissions to the residential subscriber, XDSL modems (Figure 2) referenced by ADSL which is a form of XDSL modems 104, 16.

Claim 19, Thaweethai teaches a communication server operable to modify the availability guarantee values associated with the subscriber systems (FIG. 5, column 6 lines 51-56, claim 1) referenced by the Selection Means in which the user can configure Capacity Units to match the subscriber's needs for availability guarantee. Thaweethai's Selection Means and Connection Means can be incorporated as a central communication server.

Claim 20, Thaweethai teaches a communication server operable to allocate modems between the first pool of modems and the second pool of modems in response to the modified availability guarantee values (column 2 lines 7-35, column 6 lines 23-26, column 16 lines 57-64) referenced by the selection of modems based on DCESpeed to match required Capacity Units.

Claims 21 and 29, Thaweethai teaches modification of availability guarantee value for a single subscriber session (column 6 lines 23-26, 39-46) referenced by use of CU to establish bandwidth connections for a binding session which can be a single session.

Claims 23 and 31, Thaweethai teaches modification of availability guarantee value associated with the subscriber system responsive to a request from the subscriber

system (Figure 5, column 6 lines 51-58) referenced by modification of CU by system administrator in response to a user of a subscriber system.

Claim 24, Thaweethai teaches communication server selectively couples the subscriber system to available modem in response to a request for service from the subscriber system (column 5 lines 66-67, column 6 lines 1-5, column 7 lines 35-44) referenced by actual physical connection until the network demands one where attachment to a modem is made which matches the required characteristics.

Claims 26 and 32, is rejected by claims 1, 19-21, 23-26, 29, 31 above, further Thaweethai does not teach receiving a request for XDSL service. Litteral teaches receiving a request for XDSL service from the subscriber (Figure 2, column 5 lines 1-10) referenced by the reception of a control signal requesting video data which must be transmitted via ASDL which is a form of XDSL modems 104, 16. The control signal must first establish the bandwidth connection using modem pools as taught by Thaweethai based on assigned availability guarantee values referenced by Capability Units.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the ASDL modem of Litteral to the Bandwidth-on-demand Multiplexing System of Thaweethai. Thaweethai teaches the use of various multiple modem types in the modem pool. Inclusion of an ASDL modem as another type of modem is an obvious extension.

Claim 33, Thaweethai teaches modification of availability guarantee value for a single subscriber session (column 6 lines 23-26, 39-46) referenced by use of CU to establish bandwidth connections for a binding session which can be a single session.

Claim 35, Thaweethai teaches a first modem pool comprises a number of modems and a second modem pool comprises a number of modems (FIG. 5, column 2 lines 44-52, column 7 lines 35-44, column 16 lines 1-4, 43-47) referenced by a database which maintains various modem types and capabilities such that modems with common capabilities are considered distinct modem pools.

Claims 38 and 45 Thaweethai teaches an interface coupled to the first modem pool and the second modem pool wherein the interface selectively couples a subscriber system to a modem in either the first pool of modems or the second pool of modems (FIG. 5) referenced by Connection Means which couples to a pool of modems with different modem pools defined by modem capabilities, based upon an availability guarantee value associated with the subscriber system (column 6 lines 16-22) referenced by the CU as the guarantee value associated to a port of the subscriber.

Claims 41 and 49, Thaweethai teaches modification of availability guarantee value for a single subscriber session (column 6 lines 23-26, 39-46) referenced by use of CU to establish bandwidth connections for a binding session which can be a single session.

Claims 43 and 51, Thaweethai teaches modification of availability guarantee value associated with the subscriber system responsive to a request from the subscriber system (Figure 5, column 6 lines 51-58) referenced by modification of CU by system administrator in response to a user of a subscriber system.

Claims 44 and 46, Thaweethai teaches communication server selectively couples the subscriber system to available modem in response to a request for service from the subscriber system (column 5 lines 66-67, column 6 lines 1-5) referenced by actual physical connection until the network demands one which will be via ADSL modems thereby inherently implying XDSL service.

***Allowable Subject Matter***

3. Claims 2-3, 22, 27-28, 30, 34, 36-37, 39-40, 42, 47-48 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Citation of Prior Art***

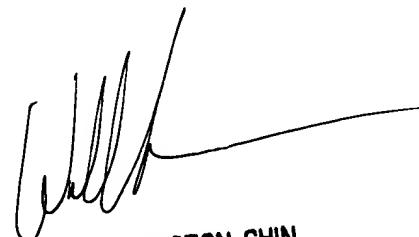
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Patent 5756280, Soora et al. discloses a multimedia distribution network using COAX/ADSL modems. Patent 6473438, Cioffi et al. discloses a method of coordinating multi-point to multi-point communications using a central modem for ADSL line systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Shew whose telephone number is 703-305-8708. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 703-305-4366. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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